

June 4, 2021

**Submitted Via “FOIA Online” at <https://foiaonline.regulations.gov>**

Regional Freedom of Information Officer  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street (OPA-2)  
San Francisco, CA 94105

**Re: Freedom of Information Act Request by Union Pacific Railroad Company re:  
Omega Chemical Superfund Site in Los Angeles, County, CA / Chrysler Property**

To Whom it May Concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. Section 552 (“FOIA”), Union Pacific Railroad Company (“Union Pacific”) hereby requests that U.S. EPA, Region 9 (“EPA”) provide copies<sup>1</sup> of the following public records related to the attached General Notice Letter dated May 19, 2021 issued to Union Pacific (Exhibit A – “Chrysler GNL”):

1. Any and all DOCUMENTS consisting of, evidencing, or relating to information that first became known to U.S. EPA since September 1, 2012 relevant to Union Pacific’s alleged CERCLA liability, if any, at the real property commonly referred to as the Chrysler Property located at 12012 – 12128 Burke Street and 12000 – 12310 Slauson Avenue, Santa Fe Springs, CA (the “Chrysler Property”) which U.S. EPA believes supports its assertion that Union Pacific is liable under CERCLA in connection with the Chrysler Property;
2. Any and all DOCUMENTS consisting of, evidencing, or relating to information developed since September 1, 2012 indicating a “disposal” of a “hazardous substance,” as those terms are defined under CERCLA, occurred on, at, or below the Chrysler Property between 1888 and 1974, both years inclusive;
3. Any and all DOCUMENTS consisting of, evidencing, or relating to communications involving EPA, the U.S. Department of Justice (“DOJ”) and/or its contractors on the one hand, and on the other hand, Gene Lucero, Marcia Williams, Nancy Cohen or any other person affiliated in any way with the Omega PRP Operating Group “OPOG” or Plaintiffs in the case styled *BASF Corporation et al. v. APC Investment Co. et al.*, Central District of California Case No. 2:14-cv-06456 (“BASF Matter”), regarding, referring or relating to (1) to the Chrysler GNL (2) any evidence purportedly supporting EPA’s issuance of the Chrysler

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<sup>1</sup> Electronic copies are preferred.

GNL; or (3) the motions for summary judgment filed in the BASF Matter relating to Union Pacific's alleged liability for the Chrysler Site;

4. Any internal communications involving EPA or the DOJ regarding the Chrysler GNL or any evidence purportedly supporting the issuance of the Chrysler GNL;
5. All EPA guidance, policies, or memoranda regarding the issuance of general notice letters;
6. All guidance, policies or memoranda which refer or relate to the use of general notice letters or other agency determinations to support litigants in CERCLA litigation in which EPA is not a party; and
7. Any and all DOCUMENTS consisting of, evidencing, or relating to whether and to what extent EPA may benefit financially from settlements entered into by Plaintiffs with Defendants in the BASF Matter, including—without limitation—whether and to what extent EPA is entitled to a percentage of Plaintiffs' settlement proceeds collected in that matter.

As used herein, "DOCUMENTS" shall have the broadest meaning possible under the Federal Rules of Civil Procedure and shall include, but not be limited to, any written, handwritten, typewritten, electronic (including email), recorded, printed or graphic materials, or tangible thing or any form of "writing" as defined under Rule 1001(1) of the Federal Rules of Evidence.

Union Pacific agrees to reimburse EPA up to \$50.00 for the reasonable cost of identifying, scanning, and/or duplicating records. If EPA anticipates that costs are likely to exceed that amount, please contact me to discuss.

Union Pacific understands that federal agencies are required to respond to FOIA requests within twenty working days, excluding Saturdays, Sundays, and legal holidays. Please comply with this requirement or let me know in advance if an extension is needed.

Union Pacific further understands that if EPA elects to withhold information responsive to this FOIA request based on an applicable exemption or exclusion, EPA is required to supply a determination letter explaining any basis it believes it has for withholding information. Moreover, if any information is withheld on the basis of an applicable exemption or exclusion, Union Pacific requests that EPA withhold only the portion of information that is subject to that exemption or exclusion. For example, if a particular document contains information that is responsive to this FOIA request and only a portion of that information is subject to a valid exemption or exclusion, Union Pacific requests that EPA redact the exempt portions, but otherwise produce the document

Regional Freedom of Information Officer  
U.S. EPA, Region 9  
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If you have any questions regarding this request or need any additional information, please contact me at (310) 201-7526. Thank you in advance for your cooperation.

Regards,

A handwritten signature in blue ink, appearing to read "S.E. Jackman".

Sherry E. Jackman

cc: David E. Cranston, [dranston@greenbergglusker.com](mailto:dranston@greenbergglusker.com)  
Sedina L. Banks, [sbanks@greenbergglusker.com](mailto:sbanks@greenbergglusker.com)  
Pete Nyquist, [ponyquist@greenbergglusker.com](mailto:ponyquist@greenbergglusker.com)

# EXHIBIT A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

**GENERAL NOTICE LETTER  
URGENT LEGAL MATTER  
PROMPT REPLY NECESSARY  
VIA FEDEX**

May 19, 2021

Lance M. Fritz, President and CEO  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, Nebraska 68179

RE: General Notice Letter and Request for Information for the Omega Chemical Corporation Superfund Site in Los Angeles County, CA, and property located at 12012 – 12128 Burke Street and 12000 – 12310 Slauson Avenue, Santa Fe Springs, CA

Dear Lance M. Fritz:

The purpose of this letter is to inform you that the U.S. Environmental Protection Agency (EPA) has determined that Union Pacific Railroad Company may be responsible under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601, *et seq.*, commonly known as the federal “Superfund” law, for cleanup of the Omega Chemical Corporation Superfund Site (Omega Site, or Site), in Los Angeles County, California and costs EPA has incurred or will incur in cleaning up the Omega Site.

The Omega Site includes the former location of the Omega Chemical Corporation, a used solvent and refrigerant recycling, reformulation, and treatment facility located at 12504 and 12512 East Whittier Boulevard in Whittier, California. The term “Site,” as used in this letter, refers to the former Omega Chemical property in Whittier, as well as contaminated groundwater emanating from the Omega Chemical property, much of which has commingled with chemicals released at other locations into an area of groundwater contamination more than four miles long.

**Explanation of Potential Liability**

Under CERCLA, specifically Sections 106(a) and 107(a), 42 U.S.C. §§ 9606(a), 9607(a), potentially responsible parties (PRPs) may be required to perform cleanup actions to protect the public health, welfare, or the environment. PRPs also may be responsible for costs incurred by EPA in cleaning up the Omega Site, unless the PRP can show any of the statutory defenses. PRPs include current and former owners and operators of a site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the site (also referred to as “generators”), and persons who accepted hazardous substances for transport and selected the site to which the hazardous substances were delivered. Records show that Union Pacific Railroad Company’s predecessors formerly owned the facility property commonly referred to as the Chrysler facility located at 12012 – 12128 Burke Street and 12000 – 12310 Slauson Avenue (collectively and historically known as 12140 Slauson Avenue)

(Property) from 1888 to 1974 and that disposal of hazardous substances occurred at the Property during that timeframe. Based on the information collected by EPA to date, EPA believes that Union Pacific Railroad Company may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with respect to the Omega Site, as the successor to former owners of the Property unless it can establish that it is a Bona Fide Prospective Purchaser (BFPP).

To facilitate cleanup of hazardous substances at the Omega Site, EPA divided the Omega Site into three operable units (OUs): OU1, OU2 and OU3. OU1 includes the former Omega Chemical facility and soil and groundwater in the immediate vicinity. OU2 is the extent of contamination in groundwater generally downgradient and originating from the former Omega facility. The OU2 contamination has commingled with chemicals released at other areas overlaying or near the OU2 groundwater plume. OU3 refers to vapor intrusion from subsurface contamination that has occurred in several buildings on and near the Omega Chemical property. EPA has reason to believe that contamination from the Property has contributed to contamination in the OU2 groundwater plume.

EPA has selected a cleanup approach (formally known as a remedial action) for OU2, described in a document called a Record of Decision (ROD), which EPA issued on September 20, 2011. In June 2016, EPA updated the 2011 ROD with an Explanation of Significant Differences (ESD). Copies of the OU2 ROD and ESD are enclosed with this letter.

To date, EPA has taken several response actions at the Site under the authority of the Superfund Program, many of which are described below.

- During an assessment of the former Omega facility in 1995, EPA observed approximately 3,000 drums on the Omega property in various stages of deterioration. Hazardous substances were detected in subsurface soils and groundwater, including, but not limited to, tetrachloroethylene (PCE), trichloroethylene (TCE), methylene chloride, and Freons 11 and 113.
- On May 3, 1995, EPA issued an Action Memorandum authorizing actions necessary to abate an imminent and substantial endangerment at the Site, including securing the Omega Chemical property; conducting sampling; removing grossly contaminated equipment, structures, and debris; removing containerized wastes; and disposing, stabilizing and treating grossly contaminated soils.
- On May 9, 1995 and August 31, 1995, EPA issued unilateral administrative orders (UAOs) to approximately 170 “major” generator PRPs – i.e., parties that sent more than 10 tons of hazardous materials to the Omega facility -- to perform removal activities at the Omega Site. These major contributing parties thereafter formed a workgroup called the Omega Chemical Site PRP Organized Group (OPOG), and completed the required activities.
- In September 1998, EPA proposed the Site for listing on the National Priorities List (NPL), EPA’s list of the most serious uncontrolled or abandoned hazardous waste sites. The Site was placed on the NPL on January 19, 1999.
- Members of OPOG agreed to perform work under a consent decree entered by the United States District Court, Central District of California, on February 28, 2001, and amended thereafter (2001 CD). Under the 2001 CD, the settling defendants agreed to pay a portion (\$282,636) of EPA’s past costs and to perform work at the Omega Site, including groundwater extraction and

treatment near the former Omega facility to contain contaminated groundwater, and a remedial investigation/feasibility study (RI/FS) addressing soils in the OU1 area. Under the 2001 CD, some defendants made payments in lieu of their direct participation in the required work.

- In August 2002, EPA issued General Notice Letters to approximately 100 additional major generator PRPs. EPA encouraged these PRPs to initiate a dialogue with OPOG concerning joining the established workgroup. The 2001 CD was amended to include parties that joined the workgroup after 2001.
- Prior to signing the 2001 CD, several PRPs withdrew from the group and elected not to sign the settlement. They formed a group that became known as the Omega Small Volume Organized Group, or OSVOG. On January 5, 2004, EPA issued a UAO to fifteen OSVOG members and three other recalcitrant parties. An amended UAO was issued on July 2, 2004. Work performed under the amended UAO included the installation of groundwater wells and sampling downgradient from the Omega Chemical property.
- On October 28, 2003, EPA sent liability notice letters to approximately 300 *de minimis* parties that sent between 3 and 10 tons of hazardous substances to the former Omega facility. In 2005, EPA settled with 171 such parties in an Administrative Order on Consent (AOC), finalized on December 12, 2005, pursuant to which EPA was compensated approximately ten million dollars.
- In April 2006, EPA required OPOG to address contaminated indoor air in a roller-skating rink (Skateland), located adjacent to the Omega Chemical property. This removal action was memorialized in an amendment to the 2001 CD. OPOG subsequently funded the purchase of Skateland and demolished it in April 2007.
- In November 2006, EPA settled with 12 parties deemed to have limited ability to pay for response costs incurred and to be incurred at the Omega Site. EPA received approximately \$100,000 pursuant to that settlement.
- In November 2007, with EPA oversight, OPOG completed an RI for OU1 soils, and an FS in May 2008. In June 2008, EPA released for public comment a Proposed Plan for soil cleanup at OU1, and selected a remedial action for OU1 in an OU1 ROD on September 30, 2008. That remedy consists of a soil vapor extraction system and institutional controls.
- In June 2009, EPA sent Special Notice Letters to PRPs soliciting an offer to perform the OU1 Remedial Design/Remedial Action (RD/RA) identified in the OU1 ROD, as well as payment of EPA's unreimbursed response costs. In a CD entered by the U.S. District Court in October 2010, OPOG members agreed to design, construct and operate the OU1 soil remedy. Under the settlement, EPA was reimbursed a portion (\$1,500,000) of its past response costs and EPA's costs associated with overseeing that cleanup.
- From March 2007 to October 2009, EPA sent General Notice Letters to additional PRPs believed to have contributed to OU2 contamination.
- In November 2009, EPA signed an AOC with OPOG to address the indoor air contamination in buildings in the vicinity of the former Omega facility (OU3). The AOC has been modified

multiple times to encompass additional buildings and response work; these mitigation efforts are ongoing.

- As noted above, EPA selected an interim remedy for containment of the OU2 plume in EPA's OU2 interim ROD, dated September 20, 2011.
- In September 2012, EPA sent Special Notice Letters to PRPs soliciting an offer to perform the OU2 RD/RA identified in the OU2 ROD and payment of EPA's unreimbursed response costs.
- In April 2016, EPA announced that a group of 66 companies (OPOG and McKesson Corporation) had agreed to a partial settlement of liability at OU2 that implements the majority of the work in the 2011 ROD, reimburses EPA \$8 million, and reimburses the California Department of Toxic Substances Control \$70,000 toward costs incurred in those agencies' past cleanup actions at the site. The Partial Consent Decree was entered by the United States District Court on March 31, 2017 (Partial Consent Decree).
- On August 29, 2019, EPA sent offer letters to approximately 270 *de minimis* parties that sent between 1 and 3 tons of hazardous substances to the former Omega facility. On July 1, 2020, EPA settled with 141 of the *de minimis* parties in an Administrative Order on Consent (EPA Docket No. 2019-13), pursuant to which EPA collected approximately \$6.3 million. EPA expects to settle with an additional 27 *de minimis* parties in 2021.
- EPA continues to monitor the extent of contamination in OU2, and to investigate other potential sources of contamination. The cleanup of OU2 will include the construction of a \$55 million water treatment facility expected to begin in 2021, and may eventually include construction of a second facility. To date, the costs incurred to clean up the Site exceed \$130 million. EPA estimates that an additional \$180 million will be spent on the cleanup over the next 30 years.

### **Information to Assist You**

To assist you in your efforts to communicate with other Omega Site PRPs and EPA, we have enclosed on a CD a copy of one of EPA's September 2012 Special Notice Letters regarding the OU2 response work, as well as its enclosures. Our Special Notice Letters included a list of the names and addresses of other PRPs to whom we sent such letters, including the volume of hazardous substances contributed by PRPs whose liability is based entirely or in part on their status as generators under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3). The names of these PRPs are sorted alphabetically and also by volume.

EPA was informed that certain PRPs settled with OPOG for the settlors' liability associated with the Site; consequently, EPA did not send Special Notice Letters to such settlors. Although these settlors did not discharge their obligation directly to EPA for costs related to the Site, EPA indicated to them that it would not send a Special Notice Letter if it received a timely good faith offer from OPOG on behalf of these settlors. The names of these settlors also were enclosed with our Special Notice Letters.

In addition, we have enclosed copies of the 2011 ROD, the 2016 ESD, the 2016 Partial Consent Decree, and the most recent fact sheet about the Omega Site. Additional fact sheets and further information about the Site can be found on the following EPA webpage:

<https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0903349>



Although the 2016 Partial Consent Decree for OU2 resolves liability for the portion of the cleanup addressed in the Partial Consent Decree for the parties that are signatories, PRPs that have not signed do not have any liability resolved. Other parties may be added to this Partial Consent Decree, and OPOG and EPA are in settlement discussions with other PRPs. We urge you to discuss the status of OU2 negotiations with OPOG. EPA recognizes that the allocation of responsibility among PRPs may be difficult. If PRPs are unable to reach consensus among themselves, we encourage the use of the services of a neutral third party to help allocate responsibility. Third parties are available to facilitate with negotiations. At the PRPs' request, EPA will provide a list of experienced third-party mediators, or help arrange for a mediator.

For your information, OPOG's contact is:

Gene A. Lucero, Esq.  
310-278-3585  
[genelucero213@gmail.com](mailto:genelucero213@gmail.com)

### **Administrative Record**

In accordance with Section 113 of CERCLA, 42 U.S.C. § 9613, EPA has established an Administrative Record containing the documents that serve as the basis for EPA's selection of the appropriate response action for the Omega Site. This Administrative Record is located at the Whittier Public Library, 7344 S. Washington Avenue, Whittier, CA, and at the U.S. EPA Regional Records Center, 75 Hawthorne Street, 3<sup>rd</sup> Floor, San Francisco, CA, (415) 947-8717. You may wish to review the Administrative Record to assist you in responding to this letter.

### **PRP Response and EPA Contact Person**

You are encouraged to contact EPA following your receipt of this letter to indicate your willingness to participate in negotiations concerning the Omega Site, including your willingness to negotiate with other PRPs.

Your response to this letter should be sent by email to:

Omer Shalev, Remedial Project Manager  
U.S. Environmental Protection Agency  
[omer.shalev@epa.gov](mailto:omer.shalev@epa.gov)

and:

Michael Massey, Assistant Regional Counsel  
U.S. Environmental Protection Agency  
[massey.michael@epa.gov](mailto:massey.michael@epa.gov)

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by the conditions at the Site, EPA urges that you give immediate attention and a prompt response to this letter.

## **Resources and Information for Small Businesses**

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law at <https://www.epa.gov/brownfields/summary-small-business-liability-relief-and-brownfields-revitalization-act> and review EPA guidance regarding these exemptions at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund>.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers, which offer various forms of resources to small businesses. You may inquire about these resources on the Agency's website at <http://www.epa.gov>. In addition, information on contacting EPA's Small Business Ombudsman is available at <https://www.epa.gov/resources-small-businesses/asbestos-and-small-business-ombudsman>.

## **Primary Contact Designation Form**

Please use the enclosed Primary Contact Designation Form to designate the most appropriate individual to receive all further correspondence on this matter on your behalf. **We request that you email us the completed form within thirty (30) days of your receipt of this letter.**

We will continue to send future correspondence to you until we receive this form. The completed Primary Contact Designation Form should be emailed to:

Keith Olinger, Case Developer  
U.S. Environmental Protection Agency  
[olinger.keith@epa.gov](mailto:olinger.keith@epa.gov)

## **Information Request**

This notice letter does not affect or nullify any other legal obligations you may have regarding the Property. If you are engaged in cleanup or other activities under the direction of federal, state or local authorities, you should continue such activities as appropriate. Likewise, this notice letter has no effect on any obligations that you may have in a court of law.

Although this letter does not affect these other obligations, EPA hereby requests, by its authority under CERCLA Section 104(e), 42 U.S.C. § 9604(e), that you provide a written response reporting the status of all of those activities and obligations. The response should include a copy of all agreements and/or orders between you and any other parties related to the Property, and documentation of any ongoing activities and obligations. **Your response should be made in writing and submitted to EPA within thirty (30) days of receipt of this letter.** It should be directed to Keith Olinger, EPA Case Developer, at the email address provided above.

Please give these matters your immediate attention, and consider consulting an attorney. If you have any questions regarding the technical aspects of this letter, please contact Omer Shalev, Remedial Project Manager, at (415) 972-3538, or [omer.shalev@epa.gov](mailto:omer.shalev@epa.gov). If you have an attorney handling your legal matters, please direct their questions to Michael Massey, Assistant Regional Counsel, at (415) 972-3034, or [michael.massey@epa.gov](mailto:michael.massey@epa.gov).

My staff and I look forward to working with you during the near future.

Sincerely,

Dana Barton, Assistant Director  
California Site Cleanup & Enforcement Branch  
Region 9, U.S. Environmental Protection Agency

Enclosures (provided on enclosed CD):

- EPA Special Notice Letter, dated September 28, 2012, with enclosures (including 2011 ROD)
- Primary Contact Designation Form
- May 2016 Fact Sheet on Explanation of Significant Differences
- Explanation of Significant Differences, June 10, 2016
- OU2 2016 Partial Consent Decree and Court Order entered March 31, 2017

cc: David Cranston, Greenberg Glusker LLP (legal counsel for Union Pacific Railroad Company)  
Gene Lucero, OPOG  
Deborah Gitin, DOJ  
Don Indermill, DTSC